

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. 2003B150(C)

**ORDER OF THE STATE PERSONNEL BOARD**

**TIMOTHY BENNETT,**

Complainant,

vs.

**DEPARTMENT OF CORRECTIONS,**

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on October 17, 2006. During this public session, the Board considered the record on appeal, including but not limited to:

1. Amended Initial Decision
2. Order Re: Proposed Modifications or Clarifications of Amended Initial Decision of the Administrative Law Judge;
3. Opening Brief of Respondent Department of Corrections;
4. Complainant's Opening Brief on Cross-Appeal;
5. Answer Brief of Respondent Department of Corrections to Complainant's Cross Appeal;
6. Complainant's Answer Brief;
7. Reply Brief of Respondent Department of Corrections to Complainant's Answer Brief; and
8. Complainant's Reply on Cross-Appeal.

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED that the Findings of Fact of the Amended Initial Decision, as modified by the Order Re: Proposed Modifications or Clarifications of Amended Initial Decision of the Administrative Law Judge, and the Conclusions of Law of the Amended Initial Decision are adopted. The remedy awarded to the Complainant, with regards to the abolishment of his position, as set forth in the Order Re: Proposed Modifications or Clarifications of Amended Initial Decision of the Administrative Law Judge, paragraph 4, is adopted.

IT IS FURTHER ORDERED that this matter is remanded to the Administrative Law Judge to hold an evidentiary hearing on two issues. The first issue is the amount of

attorney fees to be awarded to Complainant for litigating the abolishment of his position. The second issue is the appropriate amount of the pay reduction in Complainant's base pay imposed as a result of the August 8, 2003 disciplinary action. The Board rejects the Administrative Law Judge's modification of the Respondent's imposition of a permanent monthly \$300 reduction of the Complainant's base salary. The Board determines that the reduction of \$1800 total over a six month period is not sufficient given the record before the Board. The Board also finds that the permanent reduction on Complainant's base pay as imposed by Respondent was excessive given the record before the Board. The Administrative Law Judge is to make written findings of fact and enter an order regarding the monetary award as to the two issues outlined above.

IT IS FURTHER ORDERED that this order is not final agency action by the Board, as the issue regarding the amount of the disciplinary action has not yet been determined by the Board. *Colorado State Personnel Board v. Department of Corrections*, 988 P.2d 1147 (Colo. 1999).

Dated this 22 day of  
October, 2006.

  
John Zakhem, Board Chair  
State Personnel Board  
633 17th Street, Suite 1320  
Denver, Colorado 80202-3604

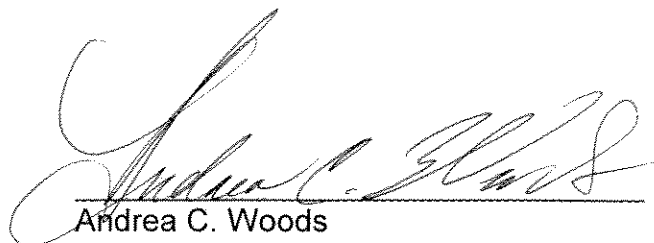
#### **CERTIFICATE OF MAILING**

This is to certify that on the 23<sup>rd</sup> day of October, 2006, I placed true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD** in the United States mail, postage prepaid, addressed as follows:

William S. Finger, Esq.  
Frank & Finger, P.C.  
P.O. Box 1477  
Evergreen, Colorado 80437-1477

And in interagency mail to:

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Andrea C. Woods